

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KEITH OWEN CAMPBELL;
LARRY A. CAMPBELL; and
WEST VIRGINIA CITIZENS DEFENSE
LEAGUE, INC., a West Virginia Nonprofit
Corporation,

Plaintiffs,

v.

CITY OF WHEELING, a West Virginia
Municipal Corporation; ROBERT G.
MATHENY, personally and in his official
capacity as the Chief of Police of the City of
Wheeling; MATTHEW KOTSON, personally
and in his official capacity as a member of the
Wheeling Police Department; RUSTY
JEWELL, personally and in his official
capacity as a member of the Wheeling Police
Department; UNKNOWN OFFICER NO. 2,
personally and in his official capacity as a
member of the Wheeling Police Department,

Defendants.

Civil Action No.: 5:11-CV-69

**PLAINTIFFS KEITH OWEN CAMPBELL AND LARRY A. CAMPBELL'S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS CLAIM OF
PLAINTIFF WEST VIRGINIA CITIZENS DEFENSE LEAGUE, INC.**

Facts

Plaintiffs filed this action on May 11, 2011 [Document No. 3]. All three plaintiffs were represented by Attorney James Mullins, Jr. On February 27, 2012, Plaintiffs Keith Campbell and Larry Campbell retained new counsel, Paul J. Harris and Joseph A. Wallace¹, who are currently representing Plaintiffs Keith Campbell and Larry Campbell [Document No. 22]. Shortly after plaintiffs Keith Campbell and Larry Campbell retained new counsel, depositions

¹ Attorney Wallace's notice of appearance erroneously provided he represented Plaintiff West Virginia Citizens Defense League, Inc. An amended notice of appearance has since been filed correcting the error on such document. [Document No. 39]

were taken and mediation was conducted. Counsel for Plaintiff, West Virginia Citizens Defense League, Inc., failed to appear at any depositions and failed to appear for the mediation. More importantly, the deposition of Plaintiff West Virginia Citizens Defense League, Inc.'s Rule 30(b) representative was properly noticed for May 10, 2012. (Notice of Rule 30(b)(6) Deposition of West Virginia Citizen Defense League, Inc. is attached hereto.) Counsel for Plaintiffs Keith Campbell and Larry Campbell, as well as counsel for defendants appeared for the Rule 30(b) deposition. Plaintiff West Virginia Citizens Defense League, Inc.'s Rule 30(b) representative failed to appear and its counsel failed to appear for the deposition. To date, no explanation has been provided as to why there was a failure on the part of Plaintiff West Virginia Citizens Defense League, Inc. to attend its own deposition. The failure of Plaintiff West Virginia Citizens Defense League, Inc. to participate in pretrial discovery has hampered progress of this case and has impeded the ability of the remaining parties to settle this case.

Discussion of Authority

Rule 37(d) of the Federal Rules of Civil Procedure provides as follows:

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice...

...the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

Rule 37(b)(2) sanctions include dismissing the claim of a party. In this case, Plaintiff West Virginia Citizens Defense League, Inc. has failed to participate in pretrial discovery and failed to attend depositions after proper notice. No explanation has been provided as to why Plaintiff West Virginia Citizens Defense League, Inc. or its counsel failed to appear for the deposition.

Conclusion

WHEREFORE Plaintiffs Keith Campbell and Larry Campbell request the Court dismiss the claim of Plaintiff West Virginia Citizens Defense League, Inc.

Plaintiffs Keith Owen Campbell and
Larry A. Campbell,
by counsel,

/s/ Paul J. Harris

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2012, I served this *Plaintiffs Keith Owen Campbell and Larry A. Campbell's Memorandum of Law in Support of Motion to Dismiss Claim of Plaintiff West Virginia Citizens Defense League, Inc.* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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